

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:10-CT-3038-FL

ADRIAN D. MURRAY,)	
)	
Plaintiff,)	
)	
v.)	ORDER
)	
ALVIN KELLER; UNKNOWN)	
EXECUTIVE DIRECTOR OF NORTH)	
CAROLINA PRISONER LEGAL)	
SERVICES; DEKHASTA ROZIER;)	
LOUISE CRUZ; JACKIE PARKER;)	
UNKNOWN MEMBERS OF THE)	
UTILIZATION REVIEW BOARD; DR.)	
DOBYNS; GARY CRUTCHFIELD;)	
MR. CAUGHILL; MR. LAIKEZ; MS.)	
BLACK; and MS. CHATMAN,)	
)	
Defendants.)	

Plaintiff filed this action pursuant to 42 U.S.C. § 1983. The matter is before the court on plaintiff's request for voluntary dismissal (DE # 63), to which defendants did not respond. In this posture, the issues raised are ripe for ruling.

An action may be dismissed voluntarily by the plaintiff without order of the court by filing a notice of dismissal at any time before service by the adverse party of an answer or a motion for summary judgment. See Fed. R.Civ. P. 41(a)(1). Otherwise an action shall not be dismissed on the plaintiff's request except upon an order of the court. See Fed. R.Civ. P. 41(a)(2).

In this case, the sole remaining defendant, Dr. Dobyns, filed an answer in this action and has asserted the affirmative defense of failure to exhaust administrative remedies. Because defendant

filed an answer, plaintiff's action may only be voluntarily dismissed pursuant to Rule 41(a)(2), which permits voluntary dismissal "on terms that the court considers proper." A plaintiff's motion under Rule 41(a)(2) should not be denied absent substantial prejudice to the defendant. S.A. Andes v. Versant Corp., 788 F.2d 1033, 1036 (4th Cir. 1986).

In light of the exhaustion defense, the court finds it proper to allow plaintiff's motion. The court additionally finds that defendant will not be prejudiced by the dismissal of this action. Accordingly, plaintiff's motion for voluntary dismissal (DE # 63) is GRANTED. This action is DISMISSED without prejudice, and the remaining pending motions are DENIED as moot.

SO ORDERED, this the 29th day of December, 2011.


LOUISE W. FLANAGAN
United States District Judge